

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

CLAIMANTS: Anthony J. Jansma; Rachel L. Jansma; Arthur R.
Koenes

CASE 41H-0825-R-2023
41H 26890-00

ORDER CONSOLIDATING CASE
AND
MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for the Gallatin River (Basin 41H) were subject to "issue remarks" resulting from pre-decree examination by the DNRC, objections, and counterobjections. To address the issue remarks appearing on the above listed claims, it is

ORDERED that the following claim be consolidated into Water Court Case 41H-0825-R-2023: 41H 26890-00.

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion

of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

FINDINGS OF FACT

1. Claim 41H 26890-00 is owned by Anthony J. Jansma, Rachel L. Jansma and Arthur K. Koenes. The claim appeared in the Preliminary Decree for the Gallatin River (Basin 41H). No objections were filed in this case.

2. On October 29, 2001, a memorandum was filed indicating the claimants claim was correct as claimed. Claimant Koenes further stated in the memorandum that "the White-Fisher Ditch has not been used for approximately 50 years." Pursuant to the August 7, 2002 Master's Report, claim 41H 26890-00 received the following issue remark:

ACCORDING TO INFORMATION FROM THE CLAIMANT THIS DITCH HAS NOT BEEN IN USE FOR APPROXIMATELY 50 YEARS. SEE DNRC MEMORANDUM DATED 10/24/01.

3. In 2017 the DNRC placed the following information remark on claim 41H 26890-00 in order to clarify the usage of the ditch:

AFTER CONVERSATIONS WITH THE CLAIMANT, AND HISTORICAL AERIAL PHOTOGRAPHIC RESEARCH THE GENERAL INFORMATION ISSUE REMARK SEEMS TO BE A MISUNDERSTANDING. THE DITCH IS STILL IN USE, AND LAND PRACTICES HAVE NOT CHANGES SINCE AT LEAST 1979.

4. Claim 41H 26890-00 received the following issue remark providing notice to the point of diversion pursuant to the August 7, 2002 Master's Report:

A CLERICAL CORRECTION HAS BEEN MADE TO THE POINT OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHT MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

This notice type issue remark has served its purpose, received no objections and should be removed.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right constitutes prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA. The information provided by the claimant and the DNRC IS sufficient to resolve the issue remarks appearing on claim 41H 26890-00.

3. Notice-type issue remarks provide water users notice of potential issues with a claim but may be removed once notice has been provided. The notice type issue remark has served its purpose by providing notice of the addition of the ditch name to the point of diversion.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above for claim 41H 26890-00 and resolve the issue remarks.

Post Decree abstract of Water Right Claim 26890-00 is served with this Report to confirm the modifications have been made in the State's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Anthony J. Jansma
Rachel L. Jansma
200 Jansma Ln
Manhattan, MT 59741-8299

Arthur R. Koenes
3565 Veltkamp Rd
Manhattan, MT 59741-8558

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 26890-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ARTHUR R KOENES
3565 VELTKAMP RD
MANHATTAN, MT 59741 8558

ANTHONY J JANSMA
200 JANSMA LN
MANHATTAN, MT 59741 8299

RACHEL L JANSMA
200 JANSMA LN
MANHATTAN, MT 59741 8299

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT
MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

Priority Date: JUNE 9, 1903

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 3.00 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT
TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 115.00

Source Name: WEST GALLATIN RIVER

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESE	16	1S	4E	GALLATIN

Period of Diversion: APRIL 20 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: WHITE-FISHER DITCH

Period of Use: APRIL 20 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	115.00		NW	8	1S	4E	GALLATIN

Total: 115.00